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May 27, 2025

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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OSCAR CRUZ, MYNOR POLANCO and
CARLOS VASQUEZ, individually
and on behalf of all others
similarly situated,

Plaintiffs,

Case No.:
2:23-cv-09200

-against-
DEMARCO BROS LANDSCAPING &
TREE SERVICE CORP d/b/a FRANK
GIOVINAZZO TREE SERVICE d/b/a
FRANK GIOVINAZZO NORTH SHORE
TREE SERVICE d/b/a NORTH SHORE
TREE SERVICE and THEODORE
PASSELIS,

Defendants.

-----X

133C New York Avenue
Huntington, New York

May 27, 2025
10:30 a.m.

DEPOSITION of THEODORE PASSELIS, a
Defendant herein, taken by the Plaintiffs,
pursuant to Order, held at the above-noted
time and place, before a Notary Public of
the State of New York.

(1) **Passelis**

(2) Q As were the other three
(3) plaintiffs in this case, were they all
(4) landscaping helpers, too?

(5) A **Mynor was more than a**
(6) **landscaping helper.**

(7) Q I didn't hear you.

(8) A **Mynor was more than a**
(9) **landscaping helper.**

(10) Q What was Mynor?

(11) A **Mynor was also a climber.**

(12) Q Was Oscar Cruz paid by the hour,
(13) by the day or something else?

(14) A **By the hours, yes.**

(15) Q Are there any documents which
(16) show what Mynor Polanco was earning per hour
(17) in 2017?

(18) A **Mynor Polanco, well, if you**
(19) **divide it by 310 per day, that's what he got**
(20) **paid \$310 per day divided by the hours.**

(21) Q I'm going to show you what have
(22) been marked as Plaintiffs' Exhibits 1

(23) through 4. These are payroll sheets and I'm
(24) going to represent that these are all the
(25) payroll sheets that we have been provided in

(1) Passelis

(2) this case.

(3) **A This is my handwriting, yes.**

(4) **MR. GIAMPILIS: He didn't ask**
(5) **anything yet.**

(6) Q So this payroll sheet, was this
(7) a form that was created by someone?

(8) **A Yes.**

(9) Q Who created the form?

(10) **A Me.**

(11) Q How did you create it?

(12) **A Excel.**

(13) Q And then how did you create the
(14) Excel sheet, where did you get the
(15) information for the Excel?

(16) **A Oh, I saw it on a YouTube, so I**
(17) **copied a similar thing from YouTube.**

(18) Q Now, we have here, Plaintiffs'
(19) Exhibit 1 are payroll sheets for the first
(20) half of 2018; is that fair to say?

(21) **A Yes.**

(22) Q Plaintiffs' Exhibit 2 are the
(23) payroll sheets for the second half of 2018;
(24) is that fair to say?

(25) **A Yes, it is. The first half and**

(1) **Passelis**

(2) **second half year, 2018 (indicating).**

(3) **MR. GIAMPILIS: It's the**
(4) **opposite.**

(5) **A It's the opposite, I'm sorry.**
(6) **This one is July and this one is December.**
(7) **I'm sorry about that (indicating).**

(8) **Q So Plaintiffs' Exhibit 2 is the**
(9) **first half of 2018?**

(10) **A That's what it seems like, yes.**

(11) **Q And Plaintiffs' Exhibit 1 is the**
(12) **second half of 2018?**

(13) **A That seems like it, yes.**

(14) **Q Let's turn to Exhibit 3, is this**
(15) **the payroll for the second half of 2019?**

(16) **A That is correct, yes.**

(17) **Q And if we turn to Plaintiffs'**
(18) **Exhibit 4, is that the payroll for the first**
(19) **half of 2019?**

(20) **A That's correct.**

(21) **Q Did you create these payroll**
(22) **sheets for every year that employees worked**
(23) **for DeMarco from 2017 until the present?**

(24) **A I created them, yes.**

(25) **Q Are there payroll sheets for any**

(1) Passelis

(2) of the four plaintiffs in this case for
(3) 2017?

(4) A I'm sure there are.

(5) Q Where are they?

(6) A Where are they? Did you ask for
(7) that?

(8) Q Yes.

(9) A You did ask for that?

(10) Q Yes.

(11) A Are you going back more than
(12) seven years?

(13) MR. GIAMPILIS: You can't ask
(14) him questions. He just asked you are
(15) there any other time sheets.

(16) THE WITNESS: Yes, there are
(17) other time sheets, yes.

(18) Q If we look at -- do you know
(19) where those other time sheets are kept?

(20) A I'm sure I can find them, yes.

(21) Q I want to draw your attention to
(22) the time period after 2020, are there any
(23) payroll sheets pertaining to any of the four
(24) plaintiffs after 2019?

(25) A Yes.

(1) **Passelis**

(2) **Q And where are those payroll**
(3) **sheets?**

(4) **A I'm assuming you have them.**

(5) **Q No, I don't.**

(6) **A You don't have them? Okay. I**
(7) **have them.**

(8) **Q I'm going to show you once again**
(9) **what has been marked as Plaintiffs' Exhibit**
(10) **2 for identification. Do you see the names**
(11) **of any of the four plaintiffs on that first**
(12) **page?**

(13) **A Yes. I see Oscar Cruz Mejia.**

(14) **Q Is on the second line?**

(15) **A Yes.**

(16) **Q Besides Oscar Cruz Mejia, do you**
(17) **see the names of any other of the four**
(18) **plaintiffs on this sheet?**

(19) **A Well, we had a couple of Carlos,**
(20) **I'm not sure if this is him, but I'm not**
(21) **sure about this one, but this is definite, I**
(22) **know that it's him.**

(23) **Q So we know that Oscar Cruz Mejia**
(24) **is one of the plaintiffs?**

(25) **A A hundred percent.**

(1) Passelis
(2) supposed to report to the yard at 8:00 a.m.?

(3) A I think it was an understood,
(4) you know, thing that -- you see, we don't --

(5) MR. GIAMPILIS: He's asking if
(6) you have texts, that's all.

(7) Q Or any other texts.

(8) MR. GIAMPILIS: We understand
(9) that you believe that, but he's asking
(10) do you have proof of it and if you
(11) don't know, you don't know. I'm not
(12) trying to coach you, but it's okay to
(13) say I'm not sure.

(14) A To be honest, I'm not sure. I
(15) don't know if I have anything. I mean, I can
(16) start looking through my phone and see, but
(17) it was just an understood thing.

(18) Q Before today, have you looked
(19) through your phone to see if you have any
(20) text messages which instruct employees to
(21) report to the yard at a certain time?

(22) A I can't answer that for you
(23) because I don't know. I can't answer that.

(24) Q I'm not asking if they exist,
(25) I'm asking if you looked specifically for

(1) Passelis

(2) A Never did, not even the
(3) slightest of anything.

(4) THE WITNESS: I need to talk.

(5) MR. GIAMPILIS: You don't need
(6) to talk.

(7) THE WITNESS: I want him to know
(8) everything.

(9) MR. GIAMPILIS: He doesn't care.

(10) THE WITNESS: Okay, he doesn't
(11) care.

(12) Q So Eduardo Villalobas, does he
(13) have text messages with Oscar Cruz?

(14) A No.

(15) Q How do you know that?

(16) A Because he has no -- he gets the
(17) same text message. When they were on the
(18) same group together, they would get the same
(19) text message of the job, not between each
(20) other.

(21) Q So it was a group text message
(22) that was sent to everybody?

(23) A No, there's two groups. So this
(24) group gets this text message, so they all
(25) know where to go and they all know which

(1) **Passelis**

(2) **trucks to take and how to do the job and**
(3) **where to go and meet up with me there.**

(4) Q And those text messages are sent
(5) on a daily basis?

(6) A Now they are. They weren't
(7) always sent on a daily basis. Sometimes I
(8) was at the -- you know, I was at the yard in
(9) the morning all the time and I would say you
(10) guys go together and you guys go together,
(11) but I started using the text messages, it
(12) was easier.

(13) Q When did you start using text
(14) messages on a daily basis?

(15) A Maybe four years ago, five years
(16) ago.

(17) Q So that would be approximately
(18) 2020?

(19) A I can't recall, but, you know,
(20) somewhere around there. I don't want to lie.

(21) Q And so you have text messages
(22) from 2022 on a daily basis?

(23) A Yes, I do, yes.

(24) Q And you have text messages from
(25) 2023 on a daily basis?

(1) Passelis

(2) A I wouldn't say full daily basis,
(3) but I would say so, yes.

(4) Q Why do you believe -- are you
(5) saying that Oscar Cruz, Mynor and Carlos are
(6) just making up the fact that they were
(7) fired?

(8) A Yes.

(9) Q Why do you believe they are
(10) making that up, though?

(11) A I think Oscar Cruz is a
(12) wonderful guy, I'll tell you how I feel and
(13) this is what I know, he's a nice guy, hard
(14) worker, hell of a hard worker, I never even
(15) had an exchange with him. I think he kind of
(16) got -- I think Mynor kind of came into the
(17) group and created something here. I think
(18) that Carlos is -- I think Mynor suggested it
(19) because he was leaving. I just kept on
(20) telling him, you know, Mynor, I need
(21) paperwork, you've been here for a while now,
(22) and I think Carlos has been -- this is his
(23) third or fourth lawsuit, I'm not sure yet,
(24) and I think he kind of made a career out of
(25) it.

(1) **Passelis**

(2) Q At the time of hiring of these
(3) four individuals, did you provide them with
(4) any documents?

(5) A **I can't recall that right now.**

(6) Q Did you have a custom and
(7) practice of ever giving documents to
(8) employees when they were hired?

(9) A **"A custom" meaning? Constant?**
(10) **Custom, meaning constantly, is that what you**
(11) **are saying?**

(12) Q Well, you did the hiring for the
(13) company, right?

(14) A **Right.**

(15) Q And no one knows more about the
(16) hiring at the company than you?

(17) A **Right.**

(18) Q When you hired employees, did
(19) you provide them with documents?

(20) A **What kind of documents?**

(21) Q Any documents.

(22) A **I can't answer that question.**

(23) Q Do you recall whether you gave
(24) any documents to Oscar Cruz when he was
(25) hired?

(1) Passelis

(2) A I know I gave him documents when
(3) he was hired, yes, because I had to get
(4) those documents back signed.

(5) Q And what documents?

(6) A I'm pretty sure there were at
(7) least the documents for the tax purposes and
(8) how many dependents and his number, I can't
(9) recall, it's called -- it's not a EIN
(10) number, it's called something else, it's
(11) like an undocumented number that everybody
(12) gets.

(13) Q ITIN --

(14) A ITIN number, yes, that's the
(15) one.

(16) Q So --

(17) A The only one -- so Mynor was the
(18) only one that I'm sure, because I've been
(19) asking him for the number, you got to get a
(20) number and you got to get a check, you got
(21) to get into taxes, that's the only one I'm
(22) sure about.

(23) Q With regard to Mynor, did you
(24) ever furnish any documents to Mynor when he
(25) was hired?

(1) Passelis

(2) **A To Mynor?**

(3) Q Yes.

(4) **A No, I can't recall.**

(5) Q No or you can't recall?

(6) **A I can't recall.**

(7) Q Carlos Vasquez, did you furnish
(8) any documents to him when he was hired?

(9) **A Yes.**

(10) Q And what documents did you
(11) furnish to him?

(12) **A From what I can recollect is the**
(13) **tax documents for him to, you know, to pay**
(14) **taxes.**

(15) Q Besides the tax documents, did
(16) you give him anything else?

(17) **A I cannot recall right now.**

(18) Q Did you make copies of any
(19) documents and give them to Oscar Cruz?

(20) **A I don't recall it.**

(21) Q Did you make any copies of any
(22) documents and give them to Mynor Polanco?

(23) **A Mynor Polanco, I don't remember**
(24) **giving any documents, no.**

(25) Q Carlos Vasquez, did you make



PAYROLL SHEET

DATE: 4/26 - 12/27/2018

O.T.	PER DAY	PER HOUR	NAME	HRS	DAYS	O.T.	PHONE PYMT	EXTRA LESS	TOTAL WEEK PAY	CHECK AMOUNT	CASH AMOUNT
\$45.00	\$220.00	\$27.50	ALBERTO - Domingo Lopez	14	2				440	\$350.00	440
\$30.00	\$160.00	\$19.37	ARMANDO - Oscar Cruz Mejia							\$350.00	
\$30.00	\$135.00	\$16.88	CAT - Walter Hernandez	14	2				270	\$250.00	270
\$60.00	\$310.00	\$38.75	EDGARDO - Saul Villalobas	14	2				620	\$500.00	620
\$30.00	\$145.00	\$18.12	HORSE - Tiburao Vega Morales	14	2				290	\$250.00	290
\$25.00	\$125.00	\$15.62	JOSE - Jose Vega	14	2				250	\$350.00	250
\$40.00	\$200.00	\$25.00	JUAN - Juan A. Granados							\$350.00	
\$30.00	\$135.00	\$16.88	LEO - Santos Vasquez	14	2				270	\$500.00	270
\$35.00	\$180.00	\$22.50	MAGNO - Magno Ayala	14	2				360	\$350.00	360 ✓
\$35.00	\$170.00	\$21.25	OSCAR - Oscar Mejia	14	2				340	\$350.00	340
\$25.00	\$125.00	\$15.62	JUAN JR.	7	1				125	\$350.00	125 ✓
\$25.00	\$125.00	\$15.62	CARLOS	14	2				250	\$350.00	250
\$25.00	\$125.00	\$15.00	JAVIER							\$350.00	
			FRANK								3
TOTAL									3215		3215



PAYROLL SHEET

DATE: July 9 2018 - July 14, 2018

O.T.	PER DAY	PER HOUR	NAME	HRS	DAYS	O.T.	PHONE PYMT	EXTRA LESS	TOTAL WEEK PAY	CHECK AMOUNT	CASH AMOUNT	
\$45.00	\$220.00	\$27.50	ALBERTO - Domingo Lopez	40	6			+100	1420	\$350.00	1070	✓
\$30.00	\$160.00	\$19.37	ARMANDO - Oscar Cruz Mejia	41	6	30			990	\$350.00	640	✓
\$30.00	\$135.00	\$16.88	CAT - Walter Hernandez	35	5				675	\$350.00	325	✓ 1000
\$60.00	\$310.00	\$38.75	EDGARDO - Saul Villalobas	41	6	60		+100	2020	\$500.00	1520	✓
\$30.00	\$145.00	\$18.12	HORSE - Tiburao Vega Morales	43	6	90			960	\$350.00	610	✓
\$25.00	\$125.00	\$15.62	JOSE- Jose Vega	40	6				750	\$350.00	400	✓
\$40.00	\$200.00	\$25.00	JUAN- Juan A. Granados	43	6	120			1320	\$465.00	825	✓
\$30.00	\$135.00	\$16.88	LEO - Santos Vasquez	35	5				675	\$500.00	175	✓
\$35.00	\$180.00	\$22.50	MAGNO - Magno Ayala	43	6	105		-100	1085	\$350.00	735	✓ 1100
\$35.00	\$170.00	\$21.25	OSCAR - Oscar Mejia	43	6	105			1125	\$350.00	775	✓
\$25.00	\$125.00	\$15.62	JUAN JR.	41	6	25			775	\$350.00	425	✓
\$25.00	\$125.00	\$15.62	CARLOS	40	6				750	\$350.00	750	✓
\$25.00	\$125.00	\$15.00	JAVIER	40	6				750	\$350.00	400	✓
			FRANK									
TOTAL												

DEF00025



PAYROLL SHEET

DATE: 12/16/2019 - 12/20/2019

O.T.	PER DAY	PER HOUR	NAME	HRS	DAYS	O.T.	PHONE PYMT	EXTRA LESS	TOTAL WEEK PAY	CHECK AMOUNT	CASH AMOUNT
\$45.00	\$240.00	\$27.50	ALBERTO - Domingo Lopez	28	4				960	\$350.00	580 ✓
\$30.00	\$160.00	\$19.37	ARMANDO - Oscar Cruz Mejia	28	4		back from vacation	first week	660	\$350.00	280 ✓
\$30.00	\$145.00	\$16.88	CAT - Walter Hernandez	28	4			-100	400	\$350.00	100 ✓
\$60.00	\$320.00	\$38.75	EDGARDO - Saul Villalobas	28	4				1280	\$500.00	780 ✓
\$30.00	\$150.00	\$18.12	HORSE - Tiburao Vega Morales	21	3				450	\$350.00	70 ✓
\$25.00	\$130.00	\$15.62	JOSE- Jose Vega	21	3				390	\$350.00	10 ✓
\$40.00	\$210.00	\$25.00	JUAN- Juan A. Granados	28	4				840	\$465.00	360 ✓
\$30.00	\$140.00	\$16.88	LEO - Santos Vasquez	28	4				560	\$500.00	60 ✓
\$35.00	\$190.00	\$22.50	MAGNO - Magno Ayala	28	4				760	\$350.00	380 ✓
\$35.00	\$180.00	\$21.25	OSCAR - Oscar Mejia	28	4				720	\$350.00	340 ✓
\$25.00	\$130.00	\$15.62	JUAN JR. ^{JOHN JR.}	28	4				440	\$350.00	440 ✓
\$25.00	\$135.00	\$15.62	CARLOS	28	4				540	\$360.00	40 ✓
\$25.00	\$135.00	\$15.00	JAVIER	28	4				540	\$350.00	160 ✓
			FRANK								
TOTAL											

DEF00044



PAYROLL SHEET

DATE: 6/10/2019 - 6/15/2019

O.T.	PER DAY	PER HOUR	NAME	HRS	DAYS	O.T.	PHONE PYMT	EXTRA LESS	TOTAL WEEK PAY	CHECK AMOUNT	CASH AMOUNT
\$45.00	\$240.00	\$27.50	ALBERTO - Domingo Lopez	33	4	135			1095	\$350.00	715 ✓
\$30.00	\$160.00	\$19.37	ARMANDO - Oscar Cruz Mejia	29	4	30			670	\$350.00	290 ✓
\$30.00	\$145.00	\$16.88	CAT - Walter Hernandez	43	5	120			845	\$350.00	465 ✓
\$60.00	\$320.00	\$38.75	EDGARDO - Saul Villalobas	30	5	60			1660	\$500.00	1160 ✓
\$30.00	\$150.00	\$18.12	HORSE - Tiburao Vega Morales	33	4	90			690	\$350.00	310 ✓
\$25.00	\$130.00	\$15.62	JOSE- Jose Vega	28	4				520	\$350.00	140 ✓
\$40.00	\$210.00	\$25.00	JUAN- Juan A. Granados	33	4	120			960	\$465.00	480 ✓
\$30.00	\$140.00	\$16.88	LEO - Santos Vasquez	28	4				560	\$500.00	60 ✓
\$35.00	\$190.00	\$22.50	MAGNO - Magno Ayala	28	4				760	\$350.00	380 ✓
\$35.00	\$180.00	\$21.25	OSCAR - Oscar Mejia	35	5				900	\$350.00	520 ✓
\$25.00	\$130.00	\$15.62	JUAN JR.							\$350.00	
\$25.00	\$135.00	\$15.62	CARLOS	28	4				540	\$350.00	40 ✓
\$25.00	\$135.00	\$15.00	JAVIER	30	5	25			700	\$350.00	320 ✓
			FRANK								
TOTAL											